



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,971	07/15/2003	Nadeen B. Myers	41482-41410	7833
21888	7590	05/01/2007		
THOMPSON COBURN, LLP			EXAMINER	
ONE US BANK PLAZA			PRATT, HELEN F	
SUITE 3500				
ST LOUIS, MO 63101			ART UNIT	PAPER NUMBER
			1761	
			MAIL DATE	DELIVERY MODE
			05/01/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/619,971

**Applicant(s)**

MYERS, NADEEN B.

**Examiner**

Helen F. Pratt

**Art Unit**

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 4-19-07.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 19-34 and 36-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 37-39 is/are allowed.
- 6) ☒ Claim(s) 19-34 and 36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

**The finality of the last office has been withdrawn in favor of the office action as set forth below.**

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 19 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 19 is indefinite in the use of the phrase "10-50% of the RDA of calcium per serving". It is not known what level of calcium this would be as the amount of calcium generally is related to particular age groups.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19-34, 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shigeru et al. (JP 402190169 A.).

Shigeru et al. disclose a process of making a calcium supplemented fluid composition by dissolving tricalcium phosphate (TCP) in citric acid. Sugar and spice

Art Unit: 1761

were added to prepare a beverage. The calcium concentration in the composition was 25 mmol/liter. The pH is seen to have been within the claimed range as various acids were added. Claims 19-21, 34 differs from the reference in whether the TCP citrate mixture of step a is added to a liquid or whether the water was used in the admixture of citric acid and TSP and in the particular amount of the RDA. However, the particular amount of the RDA depends on what age of person one is referring to. Ranges of calcium fortification can go from 800 mg to 1200 mg a day. It is seen that the degree of fortification is within the claimed range absent a showing to the contrary (see translation labeled "Excerpts" and (abstract)). Therefore, it would have been obvious to make a composition using the method of Shigeru et al.

The beverage would have been transparent and could have been used as a beverage as in claim 22 as it is assumed that an aqueous material makes up the liter as on line 7, page 1, of the translation. The beverage would have been shelf stable since the composition is the same as in claim 23. Therefore, it would have been obvious to make a composition as disclosed by Shigeru et al.

Nothing new is seen in storing a beverage at particular temperatures as in claims 24 -27, which would keep the calcium in suspension. It is well known that temperature affects the solubility of minerals.

Carbonation of calcium containing beverages, flavored and colored beverages are well known and nothing new is seen in their use as in claims 27-30. The beverage can be a juice or sports drink as the process has been shown. Therefore, it would have been obvious to treat the beverage as claimed.

Art Unit: 1761

Nothing new is seen in the use of a particular particle size in a beverage, as the TCP would have been disclosed, absent a shown that the claimed particle size would make a difference in keeping the calcium in suspension. Therefore, it would have been obvious to treat the beverage as claimed.

The limitations of claim 36 have been disclosed above and are obvious for those reasons.

#### ALLOWABLE SUBJECT MATTER


Claims 37-39 are free of the prior art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 4-26-07

  
HELEN PRATT  
PRIMARY EXAMINER